UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

VIACOM INTERNATIONAL INC., COMEDY PARTNERS, COUNTRY MUSIC TELEVISION, INC., PARAMOUNT PICTURES CORPORATION, and BLACK ENTERTAINMENT TELEVISION LLC,	)	
Plaintiffs,	)	Case No. 1
vs.	)	07CV02103
YOUTUBE, INC., YOUTUBE, LLC, and GOOGLE, INC.,	)	
Defendants.	)	
THE FOOTBALL ASSOCIATION PREMIER LEAGUE LIMITED, BOURNE CO., et al., on behalf of themselves and all others similarly situated,	)	
Plaintiffs,	)	Case No. 2
vs.	)	07CV3582
YOUTUBE, INC., YOUTUBE, LLC, and GOOGLE, INC.,	)	
Defendants.	)	

DEPOSITION OF DAVID EUN
NEW YORK, NEW YORK
THURSDAY, AUGUST 7, 2008

REPORTED BY:
ERICA RUGGIERI, CSR, RPR
JOB NO. 15377

August 7, 2008

9:36 a.m.

VIDEOTAPED DEPOSITION OF DAVID EUN, held at the offices of Jenner & Block, 919 Third Avenue, New York, New York, pursuant to notice, before before Erica L. Ruggieri, Registered Professional Reporter and Notary Public of the State of New York.

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ALSO PRESENT:

MANUEL ABREU, Videographer

But let's, for now, go on to what you did after you left Time Warner.

A. Okay.

Q. Where did you go to work next?

A. Google.

Q. And you are currently employed by Google, correct?

A. Yes.

Q. And you started there when?

A. February 2006.

Q. And has your position -- have your responsibilities at Google changed or evolved over time?

A. No, I still hold the same position.

Q. And what is that position?

A. I'm vice president of content partnerships.

Q. And what responsibilities do you have as vice president of content partnerships at Google?

A. I manage groups that are responsible for negotiating deals and managing partnerships with owners of

Video.

Remind me again when you first began working for Google.

A. February 2006.

Q. And at that time one of your areas of responsibility was content for Google Video, correct?

A. Content partnerships for Google Video, yes.

Q. And at that time, Google did not own YouTube, correct?

A. Yes.

Q. Google Video and YouTube were competitors at that time?

MR. MANCINI: Objection to form.

A. Yes, very much so.

Q. So you had no responsibility for managing what Google -- strike that.

So you had no responsibility for managing what YouTube was doing in February 2006, when you first went to Google?

A. I had never heard of YouTube, initially. And then they became the

archenemy.

Q. And then there came a time when Google acquired YouTube; is that correct?

A. Yes.

Q. And when was that?

A. I think we announced it like the fall of 2006, I think. Right. Yeah, around the fall. And then it was approved in November. I think it was right before Thanksgiving.

Q. November 2006 it was approved?

A. Yeah. I think it was 2006. Yes, yes.

Q. Okay. Let's start by focusing on Google Video at the time you first went to Google.

A. Okay.

Q. Can you describe the services, the service or services, that Google Video provided when you first began working at Google?

A. The primary business objective, you mean, of Google Video?

Q. Yes.

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A. Google Video had relationships with owners of content to provide what was referred to as a DTO, download to own, service, where you could, as a user, you could buy individual, let's say, Charlie Rose episodes for a price that the owner would determine, using Google proprietary DRM and a Google proprietary player.

Q. And what is DRM?

A. Digital rights management.

Q. And can you explain what digital rights management means?

A. Well, I'm not an engineer, but I guess my, the layman's way of looking at it is, if a content owner gives us content to sell on their behalf, as a technology partner, they would be concerned that only the people who bought it would have -- would be able to actually view it. So the DRM is basically an engineering system. It's a protection scheme to fulfill that.

Q. It prevents additional copies, above a certain number from being made?

A. Well, I mean those types of

process is resolved, the treatment will continue as designated.

MR. HOHENGARTEN: We are going to continue to honor the "highly confidential" designation. We don't think it's proper, but we are going to continue to honor it, pending meet and confer.

MR. MANCINI: Of course, we dispute your position that you don't think it's proper, but we will meet and confer.

BY MR. HOHENGARTEN:

Q. Okay. Mr. Eun, have you had a chance to look at Eun Exhibit 1?

A. I have started reading it.

Q. Okay. Let me know when you've had a chance to look over it.

A. Okay.

Q. Okay. And just for your background, the documents that have this number on the bottom which I'm calling a Bates number that begins with G, in the lower right-hand corner, are documents

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that were produced to us by Google in connection with this case, so they came from Google originally.

And Exhibit 1 is a thread of e-mails, correct?

A. Yes.

Q. And the top e-mail is from you to another Google employee.

Can you pronounce his or her name?

A. Which one?

Q. Bhanu. There's two, I'm sorry. Yeah, both of them.

A. I don't know how to pronounce Bhanu's last name, but it is Bhanu Narasimhan, and the second person is Nikesh Arora.

Q. And who were they?

A. Bhanu worked in the ops group at Google, and her team provided review of video at Google Video.

Nikesh Arora is currently president of our Europe, Middle East and Africa region.

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D. EUN

Q. And you said Bhanu, I'll use the first name in this case, responsibilities included review of video for Google Video, correct?

A. She didn't work for me. I don't know what all her responsibilities were.

But I do know that part of her responsibilities were to review videos.

Q. And on Eun Exhibit 1, the lower e-mail, which would have been the first in time, is an e-mail from Bhanu describing that review of video process; is that correct?

MR. MANCINI: Objection. The document speaks for itself.

A. I don't specifically recall this, but that's what it looks like.

Q. On the second page of Exhibit 1, Bates page 923211, under "Content reviewed in U.S. only," it says, "We disapprove for policy, (porn, violence, et cetera) or copyright," correct.

MR. MANCINI: Objection. The document speaks for itself.

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D. EUN

A. Yes, that's what the e-mail says.

Q. Is that consistent with your understanding of Google Video's video review process at the time of this e-mail?

MR. MANCINI: Objection to form.

A. Yes, it is.

Q. What is your understanding of Google Video's process for disapproving videos for copyright reasons --

MR. MANCINI: Objection to form.

Q. -- in March 2006?

MR. MANCINI: So Objection to form, and objection to the extent it's seeking legal opinion that is not discoverable in this deposition.

I don't think you are asking for that.

MR. HOHENGARTEN: I'm asking for the process, a description of the process.

A. So what was the question? My understanding of the process at the time, for a review?

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supervisor, who is my peer, saying, hey, you know, we have got to figure this out.

Q. Okay. Just to clarify one thing on the record. You referred to "our CEO," and that's Eric Schmidt, right?

A. That's right.

Q. And in your e-mail response, which is at the top of the first page of Exhibit 6, to Susan Wojcicki --

A. Yes.

Q. -- can you read the second paragraph down?

A. In my e-mail?

Q. Yes.

A. Yes. "I also ran into Peter, and he had this idea to 'beat YouTube' by calling quits on our copyright compliance standards."

Q. Was that what you were just referring to as the divide in policy?

A. It was sort of how much over DMCA compliant do we want to be? You know, what's the best business decision?

Q. Peter here is Peter Chane, whom

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you mentioned before, right?

A. That's right. So he was in the product -- he was the product manager for Google Video.

Q. And he reported to Susan Wojcicki?

A. Yes.

Q. You referred to going above what your lawyer said you needed to do for DMCA compliance, right?

MR. MANCINI: Objection to the characterization of testimony.

A. That was always the presumption.

Q. Okay. And in your answer previously you said, I think, that the argument that we were using was, it's, you know, it's not a question, with all due respect to our lawyers, about what's legal or not, because we are all talking about within the realm of legality.

What was your understanding about what was within the realm of legality?

DIR MR. MANCINI: Objection, to the

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thinking about the legal, because that was never the question about whether we shouldn't be legal. In fact, the article also talks about, you know, I think Google has failed to take off for the simple reason, because it's more annoying to use than YouTube. They talked about how YouTube was just easy to use.

So at the time, it's very much a product of the Google culture, we are focusing on the user to try to make it simple and intuitive to use. And so our focus was really on how do we create the best experience for the consumers. But I think, I don't know if I'm being clear, but that was really the focus of the back and forth.

Q. And going back to what you wrote in your e-mail in Exhibit 6, which you read aloud before, which says, "I also ran into Peter and he had this idea to 'beat YouTube' by calling quits on our copyright compliance standards."

How would "calling quits on our

copyright compliance standards" help Google Video beat YouTube?

A. Well --

MR. MANCINI: Objection.

A. I believe -- I believe, if I recall at the time, sometimes, you know, we make the lawyers the bad cops and -- you know, in the company. And I think the feeling was that they had put so many extra, like, things for the product people to do, including reviewing and taking time; and so the, I think the feeling was, because we are complying with these standards, these, you know, standards that our lawyers are adding on, it's affecting our ability to provide the best service possible to our users. And in fact, Susan's original e-mail to Eric here talks about an instant upload which will be faster than YouTube.

So I think there was a -- I don't remember, I don't recall it specifically. I think there was, generally there was this uneasiness about

the fact that YouTube was able to share, have people upload their videos and share it much more quickly, and our lawyers were preventing us from being able to do that.

But again, it was -- I mean honestly it was never a question of like, you know, whether something would be illegal or not. In fact, Peter is not a lawyer, I wasn't. I didn't really become familiar with this until we got closer to the YouTube acquisition.

Q. Okay. And let me follow up on the instance live point you made.

You are referring to something, I believe, that Susan Wojcicki --

A. She writes, she writes, "We are working on the instant upload."

Q. And which page is that on, just so we are on the same page?

A. 749.

Q. 749, okay. And so, one, if I understood correctly, one of the competitive advantages of YouTube was that videos would be uploaded very quickly?

A. Well, more quickly than we would upload it.

Q. And I'm trying to understand if Google's copyright compliance standards affected the upload time of videos.

A. It absolutely did.

MR. MANCINI: Objection to form.

Q. How did Google's copyright compliance standards affect the upload time for videos?

A. Well, at least the view, that was the perception at the time. The perception was, because Google Video had this group, Bhanu's group, proactively viewing stuff, you know, whether it was for a hate crime or porn or, you know, copyright stuff, you know, it was an extra -- it would take more time.

Q. So when a user went to upload a video to Google Video, would it get -- the video would be reviewed by Bhanu's group, before the upload would be complete?

MR. MANCINI: Objection to form.

A. Yeah, I think so.

D. EUN

A. Yes.

So to be clear, we did do proactive screening of copyright, from what it says here. So -- you had asked me about that earlier, but. I mean I wasn't involved with this, but we obviously did.

Q. Okay. So the existing policy at the time of this draft document was a zero tolerance on copyright as well as porn, violence and hate. And that was enforced with proactive screening before the video went live, correct?

A. Yeah. I have no reason to dispute that what this is is the current policy was not, you know, was not anything but the current policy back then.

Q. Okay. And the proposal is to keep rejecting full works -- to keep rejecting all porn, violence and hate, but to accept partial works up to ten minutes long and respond to take-down requests, correct?

A. That's what it says, yes.

Q. And was that proposal ever

D. EUN

THE WITNESS: Would it be possible to take a bio break?

MR. HOHENGARTEN: Absolutely.

THE VIDEOGRAPHER: The time is 2:20 p.m. We are going off the record.

(Whereupon, there is a recess in the proceedings.)

THE VIDEOGRAPHER: The time is 2:33 p.m. We are back on the record.

MR. HOHENGARTEN: We will mark Exhibit 13, which is G00001-00925742 through 43.

(Eun Exhibit 13, document, Bates stamped G00001-00925742 through 43, marked for identification, as of this date.)

A. Okay.

Q. Exhibit 13 is an e-mail from Hunter Walker to the video team, dated May 17th, 2006.

Who is Hunter Walker?

A. It's Hunter Walk.

Q. I'm sorry, you're right. Who is

Hunter Walk?

MR. MANCINI: Objection to characterization of the document.

A. He used to be in the product group on Google Video and has since become the head of product at YouTube.

Q. And what does being the head of product at YouTube entail, just briefly?

A. Basically, the role that Peter Chane had at Google Video, Hunter now has that for YouTube.

Q. And this e-mail describes Google Video rolling out a web-based video uploader with instant live, correct?

MR. MANCINI: Objection. The document speaks for itself.

A. Apparently, yes.

Q. Do you recall that rollout of a web-based video uploader with instant live?

A. I don't.

Q. At the time, May 17th, 2006, would the rollout of a web-based video uploader with instant live be something

we want to conduct our business? Is this Googley?"

Q. And Sergey Brin --

A. Sergey.

Q. Sergey Brin is one of the co-founders of Google, correct?

A. That's correct.

Q. What is GPS?

A. It's a product review where the different functions come in and where you make a presentation to EMG. So some of the slides that we -- that you showed me before would have, might have been discussed at a GPS.

Q. Okay. And in this point 6 you are describing a point that Sergey Brin made at the last GPS, correct?

A. I don't recall the e-mail, and I don't recall the particular GPS. In fact, I don't recall Sergey talking that much about video.

Q. Well, do you believe you didn't author this e-mail?

A. No, no, no.

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News.

Q. And what about video, do you also let content owners choose to opt out of having their videos included on Google Video?

MR. MANCINI: Objection to form.

A. So -- I don't work directly with Google Video anymore, but on Google Video it is now a search engine for video, and anyone can always opt out.

Q. Okay.

A. So if they don't want to be searched, they don't have -- they won't.

Q. And we will actually skip ahead in time a little bit from what we have been talking about, to after Google acquired YouTube.

Can video content owners opt out of participating, having their content uploaded to YouTube?

MR. MANCINI: Objection to form.

A. Well, we have content partnerships agreements. So they are the ones who decide which content they want to

D. EUN

Q. Do you know whether other people in the Google Video team were included in the decision-making at an earlier date?

MR. MANCINI: Objection to form.

A. Well, when I went to the, to do the due diligence, I recall going over with Susan Wojcicki. So she was on the Google Video team.

Q. But did she learn about the acquisition plans before you did?

A. I don't know.

Q. Did it strike you as strange that you didn't learn about the plans earlier than that?

MR. MANCINI: Objection to form.

A. No. Because again, it's -- Google's functionally run, and this was something that our corporate development group, it's sort of like the internal M&A group was driving.

Personally, I wish that I had been included a little bit sooner, but.

MR. HOHENGARTEN: Let's mark Exhibit 17, which is G00001-00498728

that you control as a partner.

And on those pages, again, if the partner elects to, because you can still be a partner and say, I don't want you to monetize, and a lot of non-profits, for example, do that. You can also put ads on the channel partner pages.

Q. Okay. But so there's the partner pages or partner channel pages?

A. Yes.

Q. The watch pages?

A. Yes.

Q. And there's also the search page, search results page and home results page of YouTube; is that right?

A. That's right. That's a good point, yes.

Q. And when the users come looking for content, whether it's from one of your content partners or somebody else, if they go to those pages in the process of looking for that content, they receive ads on those pages, correct?

MR. MANCINI: I just want to

object, counsel, because the witness has testified that he's not the most knowledgeable about this subject. But I'll allow to you ask the questions.

A. If we have sold an ad, they could see advertising, yes.

Q. And when you say -- when this chart says, "Monetizable, no," next to "Content uploaded by general users," it's not saying that somebody who searches for that content wouldn't see an ad on the search results page?

A. That's right.

Q. Now, for the content that is monetizable, just still looking at page 351, obviously, according to this chart, the vast majority of views, 600 million compared to 4 million, are for videos that are uploaded by general users; is that right?

A. That's right.

Q. But those 600 million videos are not monetizable, correct?

MR. MANCINI: Objection, asked